

# **Exhibit 12**

### **Declaration of Benjamin D. McRae**

1. I am currently incarcerated at the Butner LSCI ("FCI Butner Low") at FCC Butner, in housing unit Vance A, cubicle 2. My Bureau of Prisons Register Number is 87682-007. FCI Butner Low houses about 1,200 people total. It also houses people who have been assigned a medical care level 3.

2. I am 43 years old.

3. I am currently serving a 5-year sentence for possession with intent to distribute a controlled substance (cocaine). My release date is January 26, 2022. I do not have any disciplinary infractions since entering BOP custody.

4. Six months ago, BOP transferred me from the D.C. Jail to FCI Butner Low due to my medical needs. I am assigned a medical care level 3.

5. I have hypertension. I self-carry my medications, but have to wait in the pill call line when I need refills.

6. I currently have a blood clot in my left leg. I previously had a blood clot in my right leg and lungs. I have an inferior vena cava filter (IVC) in my chest, which traps large blood clots to prevent them from traveling to my heart and lungs.

7. I have a mobility impairment. Since last year, I use a wheelchair because of my history of falls and my blood clot in my leg. I have knee problems and unsteady gait. In 2014 and 2017, I had knee surgery on both my kneecaps at the Georgetown University Medical Center in Washington, DC. I am 380 pounds and 5'10".

8. I am housed in a dormitory-style housing unit of about 150 men. FCI Butner Low has 8 total units. We live in cubicles that are about 9' x 7'. Because I use a wheelchair, I am housed in my own cubicle. There is only about 5 feet or less of turning space for my

wheelchair in my cubicle.

9. Most cubicles have three people in them, two in a bunk bed and one on a single bunk. There are about 50 cubicles in my housing unit, one right next to the other. The cubicles do not have doors and the walls are about 6 feet tall. It is my understanding that the layout is the generally same in all 8 units.

10. I sleep about eight feet from the men in the 5 cubicles across from me, which house about 9 people.

11. All 150 people in the housing unit share about 12 toilets stalls, 6 showers, and 12 sinks. The toilets are less than 3' from each other. The showers are about 3' from each other. The sinks are about 2' or less from each other. People are in very close contact in the bathrooms.

12. Meals are brought to the housing unit on a cart three times a day. We have to line up for our meals. People in the lines are right on top of each other, with only 1-2' between them. When we go to return the tray, we all have to go to the same place as each other to throw the trash into a big bag. We don't line up, but are all walking past each other very close together.

13. Pill call happens three times a day. People line up with only one to two feet between them. I self-carry all my medications.

14. There are eight or nine phones for the housing unit. They are about two feet apart. People line up to use the phones. There is no social distancing in the phone lines. The prisoner who is using the phone has to clean the phone in between use if they wish. We can bring rags or socks to wipe the phone or cover it, but we do not have supplies readily available to disinfect the phone before or after using it.

15. There are five computers in a computer room for use by the men in the housing unit. Four of them are on one side of the room, with one to two feet between them. These are

used for email. The fifth is on a different side of the room for legal work. They computers are pretty much always in use. People wait around, close to each other, outside the computer room while they wait to get on the computer. I haven't seen the computers get cleaned or disinfected.

16. We can leave our cubicle to access the common areas at any time during the day, including to go to the bathroom, take a shower, and use the computer.

17. BOP gave us cloth masks. The cloth masks are thin. Most staff wear their masks.

18. At least half of the people in my housing unit are elderly and/or have serious medical conditions. There are quite a few over 75 years old. I believe all 8 units at FCI Butner Low house people who are elderly and/or have serious medical or mental health conditions.

19. If a person in the housing unit gets sick, they must request a sick call in order to get their temperature taken. They have to pay \$2 for the sick call. If their temperature is high enough, they are taken off the unit and placed in the Special Housing Unit or SHU. There have been people from the unit above me who have been taken to the SHU.

20. There has been no widespread testing for coronavirus in my housing unit. I don't know of a single person in my housing unit who has been tested for the coronavirus. I have not been tested for COVID-19. BOP staff have taken my temperature one time. They have not verbally screened me for the virus.

21. About two people in my housing unit have jobs. They go to their jobs and work with people from other housing units. I know this because I see them leave the unit to go to work and come back from work.

22. I am not aware of an emergency grievance process, and do not recall being told that there is one.

23. I am aware of one person on my unit who has been released due to their medical condition. It is my understanding that person was released on home confinement.

24. On April 21, 2020, I learned that I was approved for home confinement and I signed papers agreeing to follow the rules on home confinement. I do not know if I am still going to home confinement or when. I am not currently on quarantine and I do not know if I will be required to quarantine for 14 days before I am released on home confinement.

1. I can live at my fiancé, Tiana Crawford, in Washington, DC if I am released to home confinement. I would be able to self-isolate in the house 14 days and I would have access to medical care if I needed it. To my knowledge, BOP has not contacted my fiancé to verify her residence.

2. I filed this lawsuit to make FCC Butner change its policies and practices relating to the protection of the people in its custody from the risk from COVID-19. I am committed to trying to make that happen. I understand that being a class representative in this lawsuit means I will have to make decisions not just in my own interest, but also in the interest of the other people in the class, and I accept that responsibility.

I, Lyndsay Niles, certify that I reviewed the information contained in this declaration with Mr. McRae by telephone on May 14, 2020, and that he certified under penalty of perjury that the information contained in this declaration was true and correct to the best of his knowledge.

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/s/ Lyndsay Niles

Lyndsay Niles

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